IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1335 of 2006

Date of Decision: May 10, 2007

Shri Chatro … Petitioner.

versus.

Gorkhu & another …Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr.Chandernarayan Singh, Advocate.

For the Respondents) Mr. Anand Sharma, Advocate, for Respondent No.1.
Mr. R.M.Bisht, Dy. Advocate General with Mr. J.S.Guleria, Law Officer, for respondents 2.

Deepak Gupta, J (Oral)

This petition is directed against the order of the Financial Commissioner (Appeals), Shimla in Revision Petition No.40 of 2006 decided on 28.8.2006.

The brief facts of the case are that mutation No.375 was attested by the Assistant Collector 2nd Grade, Chamba in favour of the present petitioner on the basis of a registered sale deed No.313 dated 22.4.1993 whereby respondent No.1 Gorkhu son of Zidhi is alleged to have sold the land measuring 1-13 bighas situate in khasra No.904/112 in revenue estate Gharmani, Tehsil and District Chamba to the petitioner.

The sanction of this mutation was challenged in an appeal by Chancho Ram son of Zidhi who is the brother of Gorkhu. The ground taken in the appeal by Chancho was that he was a tenant in possession on the land in question and

therefore, the mutation could not have been sanctioned in favour of Chatro without affording him an opportunity of being heard. The appeal was allowed and the case was remanded.

It appears that after the remand, no notice was sent to Chancho and the case was contested by Gorkhu only. Even the appeals and revision were filed by Chatro against Gorkhu only Keeping in view the fact that in the earlier revenue proceedings, the Appellate Authority had clearly held that the matter cannot be decided without hearing Chancho so it is obvious that Chancho is a necessary and proper party in the proceedings and no legal or valid order can be passed in his absence.

We find that the entire litigation before the revenue Courts was going on between Chatro and Gorkhu and Chancho was never arrayed as party in any of the proceedings. We are, therefore, of the view that the orders of the revenue courts have to be quashed and set aside and the matter is remanded to the Assistant Collector 2nd Grade, Chamba who shall decide the matter afresh after hearing all the three parties i.e. Chatro son of Taro, Gorkhu and Chancho sons of Zidhi.

The parties who are present before us are directed to appear before the Asistant Collector 2nd Grade, Chamba on 24.7.2007. In case, the Assistant Collector 2nd Grade, Chamba is not personally present on that day for any reason, the Reader of his Court is directed to fix the case on a date when the Assistant Collector 2nd Grade is available. Notice thereafter be sent to Chancho and the Assistant Collector 2nd Grade shall ensure that the matter is decided latest by 31.12.2007.

The writ petition is disposed of in the aforesaid terms. No costs.

(Deepak Gupta), J.

May 10, 2007. (Surinder Singh), J.
s.